IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.380 OF 2004

The State of Maharashtra ...Petitioner
Vs.
Pankaj Ramanbhai Patel & Ors. ...Respondents

Mr.K.V.Saste, A.P.P. for the State
Mr.Kishore S.Patil for Respondents 1 & 2
Ms. Kalpana Trivedi for Respondent No.3

CORAM: B.H.MARLAPALLE & ROSHAN DALVI, JJ.
DATED: 1ST MARCH, 2006

P.C.

1. Heard Mr. Saste, the learned A.P.P. The State is seeking leave to appeal against the order of acquittal passed by the learned Metropolitan Magistrate, 43rd Court, Borivli, Mumbai in Criminal Case No.2138/P/1993.

2. 3 accused were put on trial for the offences punishable under Section 408, 477 and 120(B) of Indian Penal Code and after considering the oral and documentary evidence as well as the written arguments submitted by the learned Prosecutor the learned Magistrate examined the involvement of accused no.1 in the said offences and recorded a finding that the prosecution failed to bring the evidence and to prove his complicity and in any case he was not responsible to maintain the accounts. Prosecution was lodged mainly on the basis of the report submitted by the

Auditor who was not examined by the prosecution inspite of sufficient opportunities having been granted. At the initial stage itself the trial Court noted that there was no incriminating evidence against accused no.3 and therefore, his statement was not recorded under Section 313 of Cr.P.C. Added to this, the Prosecutor virtually gaveup the allegations against accused no.2. Therefore, the reasoning set out by the trial Court in para nos.8 to 12 of the order of acquittal does not call for any reconsideration at the hands of this Court.

2. Hence, leave to appeal is hereby refused.

(ROSHAN DALVI, J.) (B.H.MARLAPALLE, J.)